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1 - Gina McCarthy to EPA Wednesday

Washington Post, 2/20/2012

http://www.washingtonpost.com/blogs/in-the-loop/post/white-house-could-name-gina-mccarthy-to-epa-wednesday/2013/02/20/10ffa06a-7b71-11e2-9a75-dab0201670da_blog.html

Looks like it could be Gina McCarthy's big day. The assistant administrator for air and radiation at the Environmental Protection Agency is the White House's pick to head that agency — and the long-expected announcement could come as soon as Wednesday, we're hearing. McCarthy is replacing Lisa Jackson, who stepped down earlier this month. It's long been expected that whoever the nominee was would face tough questions on Capitol Hill — after all, the agency's portfolio includes flashpoint issues like climate change, a key priority for the White House. Jackson's tenure was marked by plenty of testy Hill exchanges.

2 - Obama settles on EPA, Energy Department nominees: source

Reuters, 2/20/2012

<http://www.reuters.com/article/2013/02/20/us-obama-cabinet-epa-energy-idUSBRE91J0ZE20130220>

President Barack Obama intends to nominate air quality expert Gina McCarthy to lead the U.S. Environmental Protection Agency and nuclear physicist Ernest Moniz to head the Department of Energy as early as this week, according to a source familiar with the process. McCarthy would likely become the face of Obama's latest push to fight climate change. Currently the assistant administrator for the EPA Office of Air and Radiation, she would replace Lisa Jackson, who stepped down as EPA chief this month.

3 - BP Settlement Still Unresolved As Gulf Oil Spill Trial Date Nears

Huffington Post, 2/20/2012

http://www.huffingtonpost.com/2013/02/20/bp-settlement_n_2726540.html?ncid=edlinkusaolp00000003

The U.S. Justice Department and the five Gulf coast states affected by a massive oil spill nearly three years ago have indicated they would like to settle their environmental and economic claims with BP PLC ahead of a trial scheduled to start next week. The problem is that they haven't been able to agree on the possible terms of such an agreement. Months of negotiations have failed to resolve lingering differences — not just with the London-based oil giant, but among themselves. The Justice Department convened a meeting with Gulf Coast state officials in Washington late last week in an effort to hammer out an offer to resolve the outstanding civil claims, but an agreement wasn't reached, said a person familiar with the negotiations. The person spoke on condition of anonymity because the discussions were confidential.

4 - Okla., Ark. AGs sign Illinois River agreement

San Francisco Chronicle, 2/20/2012

<http://www.sfgate.com/news/science/article/Okla-Ark-AGs-sign-Illinois-River-agreement-4294353.php>

The quality of water in the Illinois River will be the focus of a comprehensive, three-year study under an agreement announced Wednesday by officials in Oklahoma and Arkansas. The agreement was reached following months of negotiations between the two states concerning phosphorus limits in parts of the river that travels from Arkansas

through 100 miles of eastern Oklahoma, according to separate statements by Oklahoma Attorney General Scott Pruitt and Arkansas Attorney General Dustin McDaniel.

5 - State Government Hoarding, Not Spending Clean-Air Money

The Texas Observer, 2/19/2012

<http://www.texasobserver.org/state-government-hoarding-not-spending-clean-air-money/>

Every year, Texans pay millions in fees to help fund the state's two major clean-air programs. Millions of Texans pay a little extra when they get their car tested for emissions or transfer a vehicle title. The money adds up. Currently, the two programs total over \$632 million. Yet very little of that money actually goes to reduce smog in Texas' big cities. The funds are supposed to go toward state-mandated programs to get dirty engines off the road or the work-site. However, the Texas Legislature is increasingly hoarding the money to help balance the state budget. The state now withholds 88 cents of every dollar collected in the Dallas-Forth Worth area, said Shannon Stevenson, program manager at the North Central Texas Council of Governments.

6 - Luminant considers adding two generators at Hood County power plant

Fort Worth Star Telegram, 2/21/2012

<http://www.star-telegram.com/2013/02/20/4633862/luminant-considers-adding-two.html>

Energy Future Holdings is seeking an air permit for two new generators in Hood County designed to fire up quickly to meet peak electricity demand, although the company says it hasn't decided to build them yet. The application to the Texas Commission on Environmental Quality comes as Texas regulators grapple with how to manage a tight electricity supply in the state, perhaps as early as this summer. Squirreled away in EFH's earnings statement Tuesday is the disclosure that in December, subsidiary Luminant Generation filed for a permit to add two natural gas-fired combustion turbines at its DeCordova power plant, located just east of Granbury. The potential units would have total generating capacity of 460 megawatts, a reasonably large installation, and "will operate as peaking units," Luminant's TCEQ permit says.

7 - EPA spill plans need updating -- IG

Greenwire, 2/20/2012

<http://www.eenews.net/Greenwire/2013/02/20/23>

U.S. EPA must bolster response plans for spills of oil and other hazardous pollutants by improving its use of technology, the agency's inspector general said in a new report. In an audit released last week, Inspector General Arthur Elkins Jr. examined the agency's work under the National Oil and Hazardous Substances Pollution Contingency Plan and found that although regional offices have expanded contingency planning, some of their work is out of date and others miss requirements under the national contingency plan. EPA said it agreed with the conclusions and would work to implement recommendations by the end of the fiscal year.

8 - EPA Says Substantial Uncertainties Prevented Revisions to Nitrogen, Sulfur Air Standards

BNA Daily Environment Report, 2/21/2012

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=29770704&vname=denotallissues&id=a0d6p2a3t4&split=0

The Environmental Protection Agency told a federal appeals court that substantial scientific uncertainties surround the nitrogen dioxide and sulfur dioxide air standards intended to protect the environment, which prevented the agency from revising the standards in 2012 (Center for Biological Diversity v. EPA, D.C. Cir., No. 12-1238, brief filed 2/19/13). The uncertainties were so substantial that EPA could not make a reasoned decision whether a revised standard would be stringent enough or too stringent, EPA said in a Feb. 19 brief filed in the U.S. Court of Appeals for the District of Columbia Circuit. In such instances, the Clean Air Act does not require EPA to revise the air quality standard, the agency said.

9 - Some Acadiana residents fear potential for sinkhole 'disaster'

Baton Rouge Advocate, 2/20/2012

<http://theadvocate.com/home/5186742-125/some-acadiana-residents-fear-potential>

Opponents of expanding the underground natural gas storage facility under Lake Peigneur asked state regulators on Wednesday to carefully review what they argue has the potential to become another disaster on the scale of the growing sinkhole in Assumption Parish. Comments at a public hearing on the project also harkened back to 1980, when a drilling rig pushed through the top of salt mine under Lake Peigneur and opened a hole that consumed the entire water body. "This lake, this region, these resources have sacrificed enough," state Sen. Fred Mills, R-Parks, told state Department of Natural Resources officials at the hearing. "... Protect the lake. It has suffered enough."

10 - Environmentalists' Haze Suits May Further Limit EPA's Air Trading Powers

Inside EPA, 2/20/2012

<http://insideepa.com/201302202425196/EPA-Daily-News/Daily-News/environmentalists-haze-suits-may-further-limit-epas-air-trading-powers/menu-id-95.html>

Environmentalists are pursuing lawsuits over EPA's approval of western states' regional haze plans that rely in part on a regional sulfur dioxide (SO₂) trading program developed under the Clean Air Act, and a win for environmentalists could impose new limits on the agency's recently narrowed authority to use emissions trading programs. The legal challenges filed in recent weeks add to existing attempts by environmentalists to bar EPA from allowing states to use emissions cap-and-trade to qualify as a strategy for meeting federal air standards. Environmentalists are already pursuing lawsuits over an EPA rule that allows some states' participation in the agency's vacated Cross-State Air Pollution Rule (CSAPR) air trading program to meet emissions control requirements for regional haze plans.

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By Al Kamen

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In the Loop tracks who's up and who's down in government circles, the arduous "fact-finding trips" officials must take to Rio, Paris and Rome at taxpayer expense, and looks at the quirkier corners of political life in the federal city.

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Obama second term comings and goings.

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- [White House could name Gina McCarthy to EPA Wednesday](#)
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APPOINTMENTS



Posted at 10:57 AM ET, 02/20/2013

White House could name Gina McCarthy to EPA Wednesday

By [Emily Heil](#)



Assistant Administrator for EPA's Office of Air and Radiation, Gina McCarthy (Melina Mara - The Washington Post)

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It's long been expected that whoever the nominee would face tough questions on Capitol Hill — after all, the agency's portfolio includes flashpoint issues like climate change, a key priority for the White House. Jackson's tenure was marked by plenty of testy Hill exchanges.

It looks like oil and several other industries regulated by EPA won't make a fuss over the president's selection, with the coal folks being the possible exception. But several Senate Republicans, including [Sen. David Vitter \(R-La.\)](#), have made rumblings about McCarthy, signalling her nomination won't exactly be a cakewalk.

By [Emily Heil](#) | 10:57 AM ET, 02/20/2013

Categories: [Latest](#), [Local Climate](#) | Tags: [transition](#), [washingtonintransition](#)

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Obama settles on EPA, Energy Department nominees: source

Wed, Feb 20 2013

By [Jeff Mason](#) and [Roberta Rampton](#)

WASHINGTON (Reuters) - President Barack Obama intends to nominate air quality expert Gina McCarthy to lead the U.S. Environmental Protection Agency and nuclear physicist Ernest Moniz to head the Department of Energy as early as this week, according to a source familiar with the process.

McCarthy would likely become the face of Obama's latest push to fight climate change. Currently the assistant administrator for the EPA Office of Air and Radiation, she would replace Lisa Jackson, who stepped down as EPA chief this month.

Moniz, a former undersecretary of energy during the Clinton administration, is director of the Massachusetts Institute of Technology's Energy Initiative, a research group that gets funding from industry heavyweights including BP, Chevron, and Saudi Aramco for academic work on projects aimed at reducing greenhouse gases.

Moniz would replace Steven Chu, a Nobel Prize-winning physicist, who is stepping down.

The source said announcements of the two nominations were possible this week but were more likely to come later.

McCarthy has the respect of environmental groups and a reputation for working well with utilities and state regulators, which bear the brunt of implementing EPA rules.

But she will face tough questions from Republican lawmakers who believe the EPA has gone too far in its rules, which they argue have hurt the economy.

Obama has taken up climate change as one of his main second-term challenges, warning during his State of the Union speech to Congress that his administration would consider taking executive actions to fight the problem if lawmakers fail to revive a market-based system to regulate carbon emissions.

The EPA would likely be the agency to implement such executive actions.

"Gina is a true-blue environmentalist, but she is at least willing to make changes when people have legitimate concerns," said Jeffrey Holmstead, a former EPA official who held McCarthy's current job in President George W. Bush's administration and is now a lobbyist for energy interests.

He said he expected the Senate to confirm McCarthy because she had shown a willingness to work with industry.

A Boston native, McCarthy came to Washington after serving as the top environmental regulator in Massachusetts and Connecticut under Democratic and Republican governors.

Former Massachusetts Governor Michael Dukakis, a Democrat, appointed her chairwoman of a council to oversee a review of a proposed hazardous waste incinerator in the Boston area in 1990.

She later served as an environmental policy adviser to then-Massachusetts Governor Mitt Romney and launched the state's first Climate Protection Action Plan. Romney was Obama's Republican opponent in the 2012 presidential election.

In 2004, McCarthy was appointed to head Connecticut's Department of Environmental Protection under then-Governor Jodi Rell, also a Republican, and helped lead the state into a carbon cap-and-trade system for Northeastern states, known as the Regional Greenhouse Gas Initiative.

SCIENTIST AT THE HELM

By choosing Moniz, Obama would put another scientist at the head of the Department of Energy, despite a sometimes rocky tenure for Chu.

At MIT, Moniz led intensive studies about the future of coal, nuclear energy and natural gas, and he helped attract funding and research momentum to energy projects on campus.



People familiar with Moniz's work said, if chosen, he would bring his own energy and pragmatism to the job.

"He has a kind of boundless enthusiasm that's infectious," said George Shultz, a former secretary of state in the Reagan administration who is head of an advisory committee for the MIT Energy Initiative.

"He knows a lot about the subject in all its dimensions," Shultz said.

Some green groups are skeptical about Moniz because of his support for natural gas and have started petitions against his potential nomination.

They are wary of hydraulic fracturing, or "fracking," a method used by gas drillers to blast sand, water and chemicals into layers of shale to unleash natural gas trapped deep beneath the ground.

Moniz earned kudos for a pragmatic approach toward using research to find ways to reduce carbon pollution from fossil fuels and transition to cleaner forms of energy.

"It's clearly part of his DNA," said Phil Sharp, a former congressman who now leads the research group Resources for the Future and has worked with Moniz on panels.

"Those in the advocacy community who are really deep in the substance find they can work with him," Sharp said.

(Additional reporting by Valerie Volcovici and Timothy Gardner; Editing by Alistair Bell and Eric Beech)

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February 21, 2013

HUFF POST GREEN

BP Settlement Still Unresolved As Gulf Oil Spill Trial Date Nears

AP | By MICHAEL KUNZELMAN
 Posted: 02/20/2013 1:54 pm EST

NEW ORLEANS (AP) — The U.S. Justice Department and the five Gulf coast states affected by a massive oil spill nearly three years ago have indicated they would like to settle their environmental and economic claims with BP PLC ahead of a trial scheduled to start next week.

The problem is that they haven't been able to agree on the possible terms of such an agreement. Months of negotiations have failed to resolve lingering differences — not just with the London-based oil giant, but among themselves.

The Justice Department convened a meeting with Gulf Coast state officials in Washington late last week in an effort to hammer out an offer to resolve the outstanding civil claims, but an agreement wasn't reached, said a person familiar with the negotiations. The person spoke on condition of anonymity because the discussions were confidential.

Alabama Gov. Robert Bentley said reaching a settlement that satisfies all states' competing interests has been difficult.

"We just want to make sure we get our fair share," he said. "We had more economic damage than probably any state because of the loss of all the tourism we had in 2010. So it's very important that the people of Alabama are compensated for the losses related to the oil spill."

An 11th-hour settlement still could be reached before the trial starts Monday — or even after it has begun — but it is not surprising that a deal has proved elusive thus far in such a complex case, said David Uhlmann, a University of Michigan law professor and former chief of the Justice Department's environmental crimes section.

"It's extraordinarily difficult to negotiate any type of multiparty settlement, particularly when the sums involved reach into the tens of billions of dollars," he said. "The stakes are high. There are a lot of competing interests. Different parties may have different incentives to settle."

BP faces penalties under the Clean Water Act ranging from \$5.4 billion to \$21.1 billion, based on the government's estimate of how much oil spilled into the Gulf. Among the company's motivations to settle before a trial would be to avoid the higher end of that range, which U.S. District Judge Carl Barbier could impose if he ruled the company acted with gross negligence before the well blowout on April 10, 2010, that triggered an explosion, killing 11 workers and spawning the nation's worst offshore oil spill. With so much money at stake, "It's a high-stakes gamble to go to trial," Uhlmann said.

BP didn't participate in last week's talks, and pledged this week to take the case to trial. In a statement released Tuesday, the company's general counsel, Rupert Bondy, said BP has been open to settlements on "reasonable terms" but was "faced with demands that are excessive and not based on reality or the merits of the case."

In its most recent quarterly earnings report, released earlier this month, BP said state and local governments have formally presented the company with more than \$34 billion in claims. The report claimed those figures are inflated and based on "seriously flawed" methodologies.

A key sticking point among the states themselves has been deciding how much money BP would pay in Clean Water Act penalties and how much it would pay through the Natural Resource Damage Assessment process. The NRDA process, authorized by the Oil Pollution Act of 1990, only funds environmental-restoration projects and uses scientific research to assess spill damage and decide how to fix it.

A settlement that funnels more money into NRDA projects could mean a greater share of the funding would flow into Louisiana, which bore the brunt of the spill's ecological impact.

In a letter to Attorney General Eric Holder last week, Sen. David Vitter, R-La., urged the Justice Department not to settle with BP over Clean Water Act penalties without agreeing on NRDA payments.

Louisiana officials, however, don't appear to be uniformly in favor of a NRDA-heavy approach to a settlement. Sen. Mary Landrieu, D-La., joined senators from other Gulf states in signing an Oct. 5, 2012, letter to the White House that expressed "grave concerns" about a settlement that would boost NRDA payments at the expense of Clean Water Act penalties.

The RESTORE Act, which Landrieu sponsored and Congress approved last year, dictates that 80 percent of the Clean Water Act penalties paid by BP be divided among Louisiana, Mississippi, Alabama, Florida and Texas. Not only would a large chunk of that money be spread out evenly among the Gulf states, but the legislation also gives them some flexibility in deciding how the money is spent.

"Circumventing the will of Congress by shortchanging the RESTORE Act is wholly unacceptable to us. We urge you to reject such an

approach," the senators wrote.

The civil trial set for Monday originally was scheduled for February 2012, but Barbier delayed it to allow BP to wrap up a settlement with a team of private attorneys representing residents and businesses that claimed economic losses from the spill.

The trial's first phase, which could last up to three months, is designed to identify causes of the blowout and assign percentages of blame to the companies involved. The second phase would determine how much oil spilled into the Gulf.

Bondy, the BP attorney, said the company will "vigorously" defend itself against gross-negligence allegations.

"This was a tragic accident, resulting from multiple causes and involving multiple parties," he said.

He also disputed the federal government's estimate of how much oil spilled into the Gulf, claiming it's inflated by at least 20 percent.

A team of scientists working for the government estimated that more than 200 million gallons of oil spewed from BP's blown-out Macondo well from April to July 2010.

BP already has reached a settlement with the Justice Department resolving its criminal liability for the spill. The company has pleaded guilty to manslaughter and other charges and agreed to pay \$4 billion in criminal penalties.

Rig owner Transocean Ltd. reached a separate settlement with the federal government, pleading guilty to a misdemeanor charge and agreeing to pay \$1.4 in civil and criminal penalties.

Associated Press reporter Phillip Rawls in Montgomery, Ala., contributed to this report.

Follow Michael Kunzelman at <https://twitter.com/Kunzelman75>.

Okla., Ark. AGs sign Illinois River agreement

By TIM TALLEY, Associated Press

Updated 4:33 pm, Wednesday, February 20, 2013

OKLAHOMA CITY (AP) — The quality of water in the Illinois River will be the focus of a comprehensive, three-year study under an agreement announced Wednesday by officials in Oklahoma and Arkansas.

The agreement was reached following months of negotiations between the two states concerning phosphorus limits in parts of the river that travels from Arkansas through 100 miles of eastern Oklahoma, according to separate statements by Oklahoma Attorney General Scott Pruitt and Arkansas Attorney General Dustin McDaniell.

The agreement extends a similar pact reached in 2003 after Oklahoma established standards for allowable levels of phosphorus released into the Illinois River and other scenic rivers from water treatment plants, farming operations and other sites that deposit excess levels of phosphorus into the river before it leaves Arkansas.

Oklahoma filed a lawsuit in 2005 against Arkansas poultry companies that alleged poultry waste had damaged portions of the Illinois River watershed in northeastern Oklahoma, allowing bacteria to be carried into lakes and streams popular with boaters and campers. The lawsuit is pending in U.S. District Court in Tulsa.

"Generations of Oklahomans have enjoyed the Illinois River for hunting, fishing, camping and floating, and their safety and enjoyment of the river is paramount," Pruitt said. "This agreement ensures that the progress we've made will continue, and that the river remains a recreation destination for future generations."

The 2003 agreement required Arkansas to upgrade wastewater treatment plants and limit other discharges in the watershed. McDaniell said extending the new agreement eliminates the potential for costly litigation over Oklahoma's phosphorous standards in the watershed — standards Arkansas has maintained are unattainable.

"Arkansas has worked diligently to reduce phosphorus concentrations in the Illinois River watershed over the last decade, and we will continue to do so," McDaniell said. "The results of this study will guide farmers, businesses and municipalities in northwest Arkansas in their future planning, as both Arkansas and Oklahoma remain committed to improving water quality."

The study, known as a stressor response study, will determine the amount of phosphorus that can be contained within the watershed without negatively impacting water quality. It will use U.S. Environmental Protection Agency-approved methods that ensure scientifically reliable data collection and analysis.

A six-member committee will oversee the study and decide who will conduct it. Arkansas is responsible for securing the estimated \$600,000 the study is expected to cost. The funds will be administered by the Arkansas-Oklahoma Arkansas River Compact Commission, which includes representatives from both states.

Officials from both states have agreed to be bound by the study's findings. Oklahoma's phosphorous standard will remain in effect while the study is conducted.

The EPA is conducting a separate study that will establish permit limits for all dischargers in the Illinois River watershed.

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TEXAS LEGISLATURE

State Government Hoarding, Not Spending Clean-Air Money

by [Liz Farmer](#) Published on Tuesday, February 19, 2013, at 1:32 CST

Every year, Texans pay millions in fees to help fund the state's two major clean-air programs. Millions of Texans pay a little extra when they get their car tested for emissions or transfer a vehicle title. The money adds up. Currently, the two programs total over \$632 million. Yet very little of that money actually goes to reduce smog in Texas' big cities.

The funds are supposed to go toward state-mandated programs to get dirty engines off the road or the work-site. However, the Texas Legislature is increasingly hoarding the money to help balance the state budget.

The state now withholds 88 cents of every dollar collected in the Dallas-Forth Worth area, said Shannon Stevenson, program manager at the North Central Texas Council of Governments.

One program, the Texas Emissions Reduction Plan (TERP), provides businesses and industry with incentives to purchase less-polluting engines. About half of TERP is funded through a fee on vehicle title transfers—\$20 in counties that don't meet federal smog standards and \$15 in other counties.

Under the draft Senate budget, the state would collect an estimated \$772 million for TERP over the next two years, but would spend only \$133.6 million, according to the Legislative Budget Board.

"TERP money, when it's spent, is a very effective program," said Adrian Shelley, community outreach coordinator at Air Alliance Houston. "It's a shame that they're taking what's an effective program and diluting it in these ways to artificially balance the budget."

The other program, the Low-Income Vehicle Repair, Retrofit, and Accelerated Retirement Program (LIRAP), helps low-income people pay for repairs on old vehicles or replace clunkers with newer, cleaner-burning vehicles. Under the draft Senate budget, the state would collect an estimated \$80 million for LIRAP during the 2014-2015 biennium, but would spend just \$12.5 million, according to the Legislative Budget Board.

Big cities across the state are demanding major changes to the air quality programs in response to the state's hijacking their funds. The North Central Texas Council of Governments, an association of 16 county governments in the DFW area, wants the funds either fully restored or for the state to let the locals take over. The Council administers LIRAP for the state.

"Our local and elected officials see it as county money that's not coming back to the county," said Shannon Stevenson, program manager at the North Central Texas Council of Governments. Notably, LIRAP is funded solely by fees assessed in counties that are close to, or actually in, "non-attainment" of smog standards: DFW, Houston-Galveston-Brazoria and Austin-Round Rock.

Without adequate funding, Texas' polluted urban areas are struggling to make progress.

With so little money coming into the program, the North Central Texas Council of Governments has stopped offering rebates for new cars in the Metroplex. Stevenson said the counties are struggling to even offer vehicle repairs.

The Capital Area Council of Governments, an association of ten Austin-area counties, has considered a plan to opt out of the program altogether, said Adele Noel, air quality project manager for Travis County.

"Honestly, we cannot operate if they do not give us more money," Noel said.



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Star-Telegram

Luminant considers adding two generators at Hood County power plant

Posted Wednesday, Feb. 20, 2013

BY BARRY SHLACHTER, SANDRA BAKER AND JIM FUQUAY

Star-Telegram Staff Writers

Energy Future Holdings is seeking an air permit for two new generators in Hood County designed to fire up quickly to meet peak electricity demand, although the company says it hasn't decided to build them yet.

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Luminant's DeCordova plant currently has four combustion turbines with a combined 260 megawatts capacity, according to the company.

Luminant spokeswoman Ashley Barrie cautioned that filing for a TCEQ permit is only "an early step" and there's no assurance the units will be built.

"We've taken this step to put ourselves in position if market conditions" improve enough to make the investment worthwhile, Barrie told the *Star-Telegram*.

Combustion turbines are basically jet engines on the ground. In their most basic configuration, called simple-cycle, they burn natural gas to spin a turbine that turns a generator that makes electricity.

They're quick starters -- less than 30 minutes, the TCEQ permit says -- and that makes them good for coming online fast when electricity demand peaks during hot summer days. And while they're not as efficient as other designs, they're relatively inexpensive and can be built quickly.

The Brattle Group, in a June report to the Electricity Reliability Council of Texas, estimated a \$260 million cost for a simple-cycle combustion turbine plant producing 390 megawatts.

"While current market conditions do not provide adequate economic returns for the development or construction of new generation, we believe additional generation resources will be needed to support continued electricity demand growth and reliability in the ERCOT market," EFH's disclosure says.

Sundance projects hit milestone

Construction projects under way in the heart of Sundance Square reached a milestone this week with the topping out of The Commerce and The Westbrook office buildings, its developer said.

The buildings are among three new buildings and a public plaza planned for downtown Fort Worth, between Third and Fourth streets, and Commerce and Throckmorton streets.

The concrete superstructure has been completed on both buildings and roofs have been poured, Sundance Square said.

Ductwork and framing has begun on some floors of the buildings, with air handling units used for the HVAC systems also being installed. Exterior walls will begin to go up in the next 30 days as the project takes shape and nears an October completion date, Sundance said.

The Commerce, at 420 Commerce St., is a five-story, 83,000-square-foot building, and The Westbrook, 425 Houston St., is six stories and 93,000 square feet. Both will have ground-level retail space.

"We are right on schedule with this project," said Johnny Campbell, president and CEO of Sundance Square. "The buildings and plaza will open later this year and we are planning a community celebration for November. When this project is completed, the plaza itself will become a destination within Sundance Square."

An underground storm sewer replacement along Main Street will be completed in time for the Main St. Fort Worth Arts Festival in mid-April, a Sundance official said.

Construction also begins this month on the permanent, multipurpose stage at the base of The Westbrook. The steel structure of the clock tower in The Westbrook will be added by early March.

Which Wich set for West 7th

Which Wich, a sandwich shop known for its unique customer ordering system, plans a spot in the West 7th development.

Developer Cypress Equities said the 1,394-square-foot shop will open this year between Sweet Tomatoes and Wink Threading Salon in the 2900 block of West Seventh Street.

The restaurant features more than 50 varieties of sandwiches, customized as customers use red pens to make their choice on brown sandwich bags. Melissa Kulig with The Westover Group represented the tenant.

West 7th is a 13-acre pedestrian-friendly development at 7th Street and University Drive offering shops, apartments, offices and restaurants.

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THE LEADER IN ENERGY & ENVIRONMENTAL POLICY NEWS

23. WATER POLLUTION:**EPA spill plans need updating -- IG**

Jason Plautz, E&E reporter

Published: Wednesday, February 20, 2013

U.S. EPA must bolster response plans for spills of oil and other hazardous pollutants by improving its use of technology, the agency's inspector general said in a new report.

In an [audit](#) released last week, Inspector General Arthur Elkins Jr. examined the agency's work under the National Oil and Hazardous Substances Pollution Contingency Plan and found that although regional offices have expanded contingency planning, some of their work is out of date and others miss requirements under the national contingency plan.

EPA said it agreed with the conclusions and would work to implement recommendations by the end of the fiscal year.

A previous IG audit after the 2010 Deepwater Horizon oil spill also found the national contingency plan needed to be updated to respond to a spill as large as the one along the Gulf Coast ([Greenwire](#), Aug. 26, 2011).

The new audit specifically noted that some spill contingency plans haven't been updated since the 1990s. Drawing lessons from spills of national significance, the IG said, could help agencies more quickly update those response plans.

Further complicating matters is EPA's reliance on existing written plans rather than electronic documents or Web databases. The report says the "concept of a written plan could become obsolete" and that regions have already noted better coordination and planning through technological methods.

The audit also recommends that EPA assess what resources would be necessary to develop and maintain contingency plans and develop a plan to better distribute them.

[Click here](#) to read the IG report.

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35 DEN A-1

Air Pollution

EPA Says Substantial Uncertainties Prevented Revisions to Nitrogen, Sulfur Air Standards

By Jessica Coomes

The Environmental Protection Agency told a federal appeals court that substantial scientific uncertainties surround the nitrogen dioxide and sulfur dioxide air standards intended to protect the environment, which prevented the agency from revising the standards in 2012 (Center for Biological Diversity v. EPA, D.C. Cir., No. 12-1238, brief filed 2/19/13).

The uncertainties were so substantial that EPA could not make a reasoned decision whether a revised standard would be stringent enough or too stringent, EPA said in a Feb. 19 brief filed in the U.S. Court of Appeals for the District of Columbia Circuit. In such instances, the Clean Air Act does not require EPA to revise the air quality standard, the agency said.

EPA has acknowledged the existing secondary national ambient air quality standards, which were set in 1971, do not adequately protect the environment from the indirect effects of acid rain and other forms of acid deposition.

However, in an April 3, 2012, final rule at 40 C.F.R. pt. 50, the agency retained the existing standards, saying it did not have enough information to set new standards and was planning a five-year field pilot program to collect data to help in the future development of a multi-pollutant standard (77 Fed. Reg. 20,218; 55 DEN A-1, 3/22/12).

EPA Not Compelled to Revise NAAQS

"[T]he Clean Air Act does not compel EPA to revise the secondary NAAQS where, as here, EPA could not make a reasoned decision that such a revision would be in accordance with the statute," EPA wrote in its brief. "Furthermore, EPA adequately explained, and the record supports, EPA's conclusion that the uncertainties surrounding a potential revised standard to address aquatic acidification are so substantial that such a reasoned decision could not be made."

The Center for Biological Diversity, the Clean Air Council, and the National Parks Conservation Association sued EPA over its final rule, saying in a Nov. 30 opening brief that the Clean Air Act requires EPA to set standards despite scientific uncertainty (232 DEN A-4, 12/4/12).

EPA said it agrees with the petitioners that it does not need to have perfect knowledge before it sets standards.

However, EPA's brief said the agency "did not base its decision on the types of routine scientific uncertainties that underlie most models and predictions. Rather, EPA cannot make the necessary conclusion that the critical load calculation, which addresses the amount of acidifying deposition a waterbody can withstand, is representative of all waterbodies within a particular ecoregion, for all ecoregions across the country. Nor can EPA adequately evaluate the models that address the deposition of reduced nitrogen and the oxides of nitrogen and sulfur."

The petitioners asked the D.C. Circuit to vacate the final rule and remand it to the agency to set a new standard within 14 months.

Standards Set in 1971

EPA sets primary national ambient air quality standards to protect public health and secondary standards to protect the environment and public welfare. The secondary standards for nitrogen dioxide and sulfur dioxide, originally set in 1971, are intended to protect the environment against the direct effects of the pollutants, not the indirect effects of acid rain and other forms of acid deposition.

Nitrogen dioxide and sulfur dioxide are the primary precursors to acid rain.

The secondary standard for nitrogen dioxide is 0.053 part per million, averaged annually. The standard for sulfur dioxide is 0.5 ppm, averaged over three hours and not to be exceeded more than once annually.

EPA's brief also argued that the petitioners lack standing for part of their claim. The petitioners did not allege any harm to their members specifically from EPA not establishing standards to address nutrient enrichment. The petitioners only claim injury regarding acidification.

For More Information

EPA's brief in *Center for Biological Diversity v. EPA*, filed in the U.S. Court of Appeals for the District of Columbia Circuit, is available at <http://op.bna.com/fcr.nsf/r?Open=jcos-954r9j>.

Contact us at <http://www.bna.com/contact/index.html> or call 1-800-372-1033

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Some Acadiana residents fear potential for sinkhole 'disaster'



BY RICHARD BURGESS

1 COMMENTS

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Acadiana bureau
February 20, 2013

NEW IBERIA — Opponents of expanding the underground natural gas storage facility under Lake Peigneur asked state regulators on Wednesday to carefully review what they argue has the potential to become another disaster on the scale of the growing sinkhole in Assumption Parish.

Comments at a public hearing on the project also harkened back to 1980, when a drilling rig pushed through the top of salt mine under Lake Peigneur and opened a hole that consumed the entire water body.

"This lake, this region, these resources have sacrificed enough," state Sen.



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Fred Mills, R-Parks, told state Department of Natural Resources officials at the hearing. “... Protect the lake. It has suffered enough.”

Mills was joined in opposition by residents in the area, other public officials and representatives from the Sierra Club, the Louisiana Environmental Action Network and the Tulane Environmental Law Clinic.

Atlanta-based AGL Resources is proposing to scour out two new salt caverns for natural gas storage at its Jefferson Island Storage & Hub Facility, expanding on the existing two storage caverns there.

AGL has pointed to a record of no problems since the facility opened in the 1990s and maintains that the proposed expansion has been carefully studied to minimize environment impacts and ensure safe operations.

The proposed expansion has met strong opposition and is now beginning its second permitting attempt. The project was halted in 2006 when then-Gov. Kathleen Blanco called for an extensive environmental study of the project.

AGL responded with a lawsuit against the state that was settled in 2009 with some additional requirements, but not the environmental study that Blanco had sought.

The permitting process is moving forward again at a time when there are near daily news reports about the problems created by a large sinkhole related to a failed salt cavern at Bayou Corne in Assumption Parish.

“Coastal management can stop another disaster by denying this permit,” said Save Lake Peigneur President Nara Crowley, referring to DNR’s Office of Coastal Management.

Crowley and other residents cited a host of potential safety and environmental concerns and pointed to the continued bubbling at the lake.

Bubbling also was reported at Bayou Corne before the sinkhole developed there last year.

The bubbling at Lake Peigneur has been more sporadic, but Crowley said there have been 79 documented instances of bubbling at the lake in recent years, including three in the past week.

AGL Managing Director of Government Affairs Richard Hyde said in interview earlier this month that testing has not identified the precise cause of the bubbling but has confirmed that “it is not coming from our wells.”

Crowley has questioned the thoroughness of testing done so far and said the critical issue is that there is currently no explanation for the bubbling.

Opponents of the project have also raised concerns about how dredging for the project could impact water quality at the scenic lake and whether the up to 3 million of gallons of water a day needed to scour out the new salt caverns might draw down groundwater to the point where salt water would push in from farther south and contaminate local wells.

“Y’all are messing with our drinking water and the places where we live,” said Iberia Parish Councilman Marty Trahan, who represents the Lake Peigneur area.

AGL has maintained there would be no significant effect on water quality in the lake or in water wells.

The subject of Wednesday’s public hearing was a permit for dredging

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work needed to bring equipment into the lake for the cavern expansion work.

AGL needs two other state permits for the project — one to scour out caverns in the salt dome and another to use the scoured caverns for natural gas storage.

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Daily News

Environmentalists' Haze Suits May Further Limit EPA's Air Trading Powers

Posted: February 20, 2013

Environmentalists are pursuing lawsuits over EPA's approval of western states' regional haze plans that rely in part on a regional sulfur dioxide (SO₂) trading program developed under the Clean Air Act, and a win for environmentalists could impose new limits on the agency's recently narrowed authority to use emissions trading programs.

The legal challenges filed in recent weeks add to existing attempts by environmentalists to bar EPA from allowing states to use emissions cap-and-trade to qualify as a strategy for meeting federal air standards. Environmentalists are already pursuing lawsuits over an EPA rule that allows some states' participation in the agency's vacated Cross-State Air Pollution Rule (CSAPR) air trading program to meet emissions control requirements for regional haze plans.

The CSAPR-related lawsuits are on hold pending a decision by the U.S. Court of Appeals for the District of Columbia Circuit on whether to grant EPA's request to rehear *en banc* its ruling vacating CSAPR. But if the court rejects the request, letting the ruling stand is expected to significantly narrow EPA's trading program flexibility.

Although environmentalists pursuing the haze suits say they do not oppose emissions trading in principle, the lawsuits over the haze SO₂ program could, if successful, then create a further hurdle to the agency's powers to use air law authority to approve state plans that rely on trading efforts to meet Clean Air Act mandates.

EPA, however, in its response to comments on the haze SO₂ trading plans has defended the programs by saying that they are effective at reducing haze levels, regardless of how many states take part in the effort.

WildEarth Guardians [filed a Dec. 27 suit](#) in the U.S. Court of Appeals for the 10th Circuit over the agency's Nov. 27 approval of New Mexico's haze state implementation plan (SIP), that relies on the SO₂ program.

The group then filed Jan. 11 and Jan. 23 suits in the same court challenging [EPA's approval of SIPs by Wyoming](#) and [Utah](#), which similarly rely on the trading program. SIPs outline the pollution control measures states will adopt to comply with the regional haze program.

The SIPs aim to meet the goals of the haze program -- designed to cut air pollution in order to restore visibility in national parks and wilderness areas by 2064 -- by creating a "backstop" mandatory SO₂ trading program if the states' voluntary pollution goals prove ineffective at reducing haze. If the states are able to secure quick and measurable haze reductions through the voluntary measures, meeting prescribed "milestones," then the SO₂ cap-and-trade program would not take effect.

The states are relying on trading authority in Clean Air Act section 309, an approach that [EPA has offered to nine western states](#) as a haze control strategy, including California, Colorado, Nevada and Oregon. Only three states -- New Mexico, Utah and Wyoming -- have decided to proceed with the program and submit required SIPs.

Trading Flexibility

James Martin, [outgoing administrator of EPA Region VIII](#) that covers several western states, is said to be an advocate of the trading flexibility allowed by section 309.

In 2010, sources said Martin was trying to salvage the program as a faster route to emission cuts than mandatory best available retrofit technology (BART) controls -- an alternative states can pursue under section 308. Sources said that the voluntary milestones have helped to achieve significant emissions cuts faster than BART controls, so the mandatory backstop SO₂ trading plan never

had to take effect.

Some environmentalists generally oppose using trading to achieve emissions cuts, and say there is no guarantee that a cap-and-trade program will reduce emissions because companies could buy credits to comply rather than install pollution controls. That argument is central to environmentalists' ongoing suit over EPA's rule allowing CSAPR to qualify as BART for some haze SIPs.

Previous lawsuits over EPA trading programs have limited the agency's air law power, including the ruling vacating CSAPR and a 2008 D.C. Circuit ruling that scrapped a Bush-era mercury emissions trading rule.

One environmentalist says EPA's section 309 trading program is similarly not a viable strategy, and would not produce sufficiently deep emissions cuts to count as equivalent to source-specific BART for haze.

"Unfortunately, only three states have opted into this rule, calling into question its ability to actually achieve meaningful regional haze reductions," according to the environmentalist. The source adds that the SO₂ cap EPA relied on to approve the state plans for New Mexico, Utah, and Wyoming "is inappropriately high."

In particular, "EPA assumed that emissions from coal-fired power plants would be much higher than what they actually are," the source says. Still, the source says environmentalists challenging the section 309 program are not opposed to emissions trading in principle, but "we are just trying to ensure the outcomes meet the mark."

Six environmental groups including WildEarth Guardians and Sierra Club outlined their opposition to the New Mexico plan in a July 16 comment letter to EPA. Because only three states remain in the program it is now "defunct," the groups say. The program as it now stands would "have little visibility benefit" in the participating states, and relies on an inaccurate emissions benchmark. It also fails to satisfy the air act requirement that alternatives to BART provide greater visibility improvements than BART would, according to the groups' comments.

'Reasonable' Progress

In addition, the state's general goals for "reasonable progress" in reducing haze, outlined under the SIP's long-term strategy, will be insufficient to meet the haze program's objective by 2064, they say. The program fails section 309's requirement that a plan be "comprehensive," the groups say. "Indeed, all of the evidence suggests that a three-state trading program is insufficient to remedy visibility impairment, as required by the regional haze rule."

EPA in a Dec. 14 response to public comments on its approval of Utah's section 309 plan says there is no reason to abandon the trading program simply because few states in the western air transport region are taking part.

"We disagree that the section 309 program is defective because only three states remain in the program. EPA's regulations do not require a minimum number of transport region states to participate in the 309 trading program, and there is no reason to believe that the limited participation by the nine transport states will limit the effectiveness of the program in the three states that have submitted 309 SIPs," according to the agency.

Environmentalists have also criticized EPA's approval of New Mexico's BART determination for particulate matter (PM) for the coal-fired San Juan Generating Station, "because significantly lower emission limits can be achieved, and would provide visibility benefits, with baghouses and/or wet electrostatic precipitators."

The plant is already at the center of a legal dispute between its owner utility PNM and EPA. PNM and the state are challenging EPA's imposition of a federal implementation plan (FIP) for San Juan for other emissions. The FIP calls for installation of selective catalytic reduction (SCR), an expensive but effective emissions control for nitrogen oxides. PNM and New Mexico say SCR is not warranted at the plant, while EPA and environmentalists disagree. -- *Stuart Parker* (sparker@iwpnews.com)

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